

EXHIBIT B

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL NO. 1456
PRICE LITIGATION) CIVIL ACTION:
THIS DOCUMENT RELATES TO) 01-CV-12257-PBS
U.S. ex rel. Ven-A-Care of) Judge Patti B. Saris
the Florida Keys, Inc. v.)
Abbott Laboratories Inc.,) Chief Magistrate Judge
No. 07-CV-11618-PBS) Marianne B. Bowler

VIDEOTAPED 30(b)(6) DEPOSITION OF

JOHN M. LOCKWOOD, M.D.

Volume I

(Taken by Defendant Abbott Laboratories Inc.)

April 23, 2009

9:27 a.m.

Suite 800

1420 Peachtree Street, N.E.

Atlanta, Georgia

Reported by: F. Renee Finkley, RPR, CRR, CLR,
CCR-B-2289

1 concepts for the Ery case?

2 A. I think I just took it on as a project for
3 myself.

4 Q. And let's just be clear about one thing.
5 You and I during the course of this deposition will
6 sometimes refer to the Erythromycin drugs as Ery, and
7 that's clear, right?

8 A. That would be fine, yes.

9 Q. When did you --

10 A. Well, to the extent we're talking about
11 the oral Erythromycins for this case.

12 Q. Yes. Yes. That's correct. And again,
13 that -- this case -- might as well, while we're on
14 the subject, mark the -- I'm going to mark a copy of
15 the complaint and its exhibits as Exhibit 2 for this
16 deposition.

17 (Exhibit Lockwood Ery 002 was
18 marked for identification.)

19 Q. (By Mr. Berlin) Here you go,
20 Dr. Lockwood. What I've handed you is Exhibit 2,
21 which is a copy of the complaint in this case and the
22 exhibits to the complaint. Just so we're clear about

1 the -- and I'm going to get to the complaint in more
2 detail later, but just as a preliminary issue, when
3 we refer to Ery or the Erythromycins at issue in the
4 case, those are the NDCs that are listed in paragraph
5 33; is that correct?

6 A. Yes.

7 Q. And going back to your previous answer
8 about why you're testifying here today, you said that
9 you took on the job of spending time to work and
10 develop the concepts for this case. When did you
11 first embark upon that task?

12 A. I would say in particular, just to these
13 drugs and this complaint, sometime in 2000.

14 Q. And we'll get to this in much greater
15 detail later, but what led you to look at these
16 particular drugs, the drugs listed in -- at least
17 some of the drugs listed in paragraph 33 in 2000?

18 A. I was looking at some of our pricing data
19 and I noticed a couple of things about these drugs.
20 These were Abbot Pharmaceutical Products Division
21 drugs, PPD drugs. It was known to me that Abbott PPD
22 was primarily a brand company. I knew some of these

1 drugs are brands and I noticed discrepancies between
2 the prices that we could buy these drugs from the
3 wholesalers and the reported WAC prices; and I
4 noticed that there was generally a relationship, a
5 very consistent relationship between the normal
6 Abbott brand drugs at Pharmaceutical Products
7 Division, they're more typical brands, I guess.

8 There was a very solid repeatable
9 relationship between the wholesale -- the -- I guess
10 I need to say this properly, the wholesale catalog or
11 list price, whatever, the wholesaler's catalog price
12 and the average wholesale price and the catalog
13 wholesaler's price and the reported WAC.

14 And for these particular drugs I found
15 those relationships were not the same as the other
16 brand drugs at PPD. And it stuck out -- it stuck out
17 to me when looking at that. And I spent more time
18 looking and understanding why that was the case and
19 what was causing it and understanding that because I
20 quite simply thought that there was perhaps a
21 fraudulent misrepresentations in prices for these
22 drugs.

1 Q. And did you reach any sort -- any
2 conclusion as to what was causing this discrepancy
3 that you described?

4 A. Well, I think the most common or the -- I
5 guess the thing that stood out most was that when I
6 looked at Abbott's reported wholesale acquisition
7 cost, their WAC price for these drugs, that that
8 price in many circumstances was way above the price
9 that I could buy this drug from McKesson at their --
10 it's termed a lot of different things, they're
11 wholesale catalog list price, their noncontract
12 price, meaning the price that the wholesaler would
13 sell that drug to you without a contract, just a
14 simple relationship, wholesaler/pharmacy
15 relationship, and that I could buy these drugs for
16 less than what Abbott was reporting that they were
17 selling the drugs to the wholesalers for.

18 And that was not the situation with
19 Abbott's other brand drugs, meaning that the prices
20 that I could buy -- I don't know. Let's take a drug
21 like Biaxin, perhaps, or Depakote. The catalog list
22 price, noncontract price for those drugs was very

1 close to, similar to, or identical to the reported
2 wholesale acquisition cost on those drugs. But for
3 these Ery drugs, that was not the case.

4 And that led me to believe that, number
5 one, the catalog price that I was buying it at, to my
6 understanding in our conversations with McKesson, was
7 slightly above their acquisition cost, 2 to
8 5 percent, in that range. So it led me to believe
9 that McKesson was actually buying the drug for less
10 than what I was buying it for, meaning they were
11 selling it to me with some markup.

12 And -- and I saw that as a big problem,
13 actually, with these drugs and that it looked like
14 WAC fraud to me, meaning that they were -- that
15 Abbott was not honestly reporting their wholesale
16 acquisition cost on these drugs.

17 Q. I'd like just to back up to one thing you
18 said so that we're clear for the jury who might be
19 listening to this videotape. Do you understand that
20 Abbott, prior to 2004, had a Hospital Products
21 Division often referred to as HPD?

22 A. I am aware of that, yes.

1 organized that we had a specific task list about what
2 to do, but we started looking at some oral drugs
3 and -- and in particular looking at the FUL issue.
4 And that ultimately led to me looking at -- so, I
5 mean, I looked at lots of other manufacturers too.
6 It's not like I only looked at Abbott. But I looked
7 at these drugs and looked at PPD and found what I
8 thought were discrepancies and problems with these
9 drugs in terms of their price reporting.

10 Q. When you sat down to look at this issue,
11 describe how you went about doing that, I mean sort
12 of the mechanics of and the documents that you used
13 to try to evaluate the issue.

14 A. Well, we had a number of things available,
15 meaning we had a number of different price lists
16 available, and we had McKesson catalogs that went
17 back I think to 1992, which contained prices on these
18 drugs or many of these drugs. We had some Bergen
19 Brunswig printouts that contained prices on these
20 drugs.

21 And during 2000 we had been essentially
22 shifted by McKesson from the catalogs into an

1 electronic version of their catalog called Econolink
2 that was on a computer, so that I basically did a
3 printout or looked at the Abbott drugs listed in
4 Econolink, because I guess it was user-friendly or it
5 was computerized, whatever, and really looked at and
6 saw and noticed the discrepancies between the
7 so-called regular costs at McKesson, which is their
8 catalog price, list price, noncontract price, variety
9 of different names for it, and the AWP.

10 And during 2000 I was able to -- I did a
11 number of things. I was able to print that Econolink
12 database to a file, a text file. And during 2000 and
13 perhaps a little bit earlier, but mainly during 2000,
14 one of my other projects was to learn and teach
15 myself how to use Microsoft Access, which is a
16 software program that allows you to manipulate
17 databases.

18 So one of the things I was able to do was
19 to import the text file from this electronic catalog
20 into Microsoft Access, including all the pricing
21 data, times, dates, the whole thing as a text file.
22 And then I was able to essentially investigate this

1 more by creating new columns where I would, for
2 instance on an investigative level, divide the
3 average wholesale price by the regular cost, the
4 catalog price. That would give me a ratio. And then
5 I could --

6 Q. I'm sorry. Which number was the numerator
7 and denominator?

8 A. The AWP that was in that program divided
9 by the noncontract catalog price, regular cost
10 column, what -- there were a number of different
11 names for this column, and that gave me a ratio;
12 essentially divide the AWP by the regular cost
13 column.

14 That showed me that for the bulk of the
15 Abbott PPD drugs, that that ratio was 1.25, as I
16 recall. Now, this is a -- kind of an interesting
17 math issue, but in -- as I recall -- and I'd probably
18 have to sit down, do the math again. But I think if
19 you add 20 percent to the WAC price -- First Data
20 Bank was doing that to arrive at an AWP, but the
21 reverse of that gives you a 1.25 ratio. It's a
22 little bit -- it's a math glitch.

1 But suffice it to say that for all the PPD
2 drugs, that ratio was about 1.25. For the -- mainly
3 the drugs in this complaint, that ratio was
4 significantly higher, and it varied from drug to
5 drug, but significantly higher, so that it allowed me
6 to also look at -- I ultimately looked at the
7 reported WACs on those and found, I felt, consistency
8 in the other PPD drugs that -- they're typical brand
9 drugs. The regular cost column was very consistent
10 with the reported wholesale acquisition cost, and for
11 these Ery drugs, it was inconsistent.

12 I then also looked at these drugs in
13 regards to the FUL. And for many of the drugs that
14 were initially filed -- and I think with our initial
15 notice and whatever, disclosures, whatever those
16 legal terms are, but one of our initial letters to
17 the government on this, we pointed out that -- at
18 least in our opinion, that had Abbott reported what
19 we assume were the real wholesale prices, which were
20 actually below the price we were getting it -- and
21 we're assuming 2 to 5 percent below -- that in many
22 of those cases, had Abbott, in our opinion, reported

1 truthfully what the -- they were really selling the
2 drug to the wholesaler for, that the federal upper
3 limit would have been a different number than what it
4 was or that the federal upper limit for these drugs
5 that -- that, you know, was being paid at that time.

6 We also thought that -- it appeared that
7 these drugs were all markup company drugs, that First
8 Data Bank was dealing with them as a markup basis and
9 that if they had truthfully reported the WAC prices
10 and -- to First Data Bank, that an AWP would have
11 been calculated, which was significantly lower than
12 the AWP that we were seeing in the data sources, and
13 in many cases, if not all of the initial cases -- I'd
14 have to look at them, look at the letter; we can look
15 at that letter if you like -- that the AWP for these
16 drugs would have been below the federal upper limit.

17 (Discussion off the record.)

18 Q. (By Mr. Berlin) While you were talking, I
19 believe what we got was the additional -- the copies
20 of your transcript of your previous depositions,
21 which we haven't needed to refer to. But I just
22 wanted you to have a copy just in case you wanted to

1 want me to sit down with him and try to recreate
2 that.

3 MR. BERLIN: Yeah. That's fine. Why
4 don't we skip this question.

5 MR. BREEN: As long as it's clear it's not
6 a 30(b)(6) question.

7 MR. BERLIN: That's correct.

8 MR. BREEN: I'll be happy to help the
9 witness give the best answer possible.

10 MR. BERLIN: That he can give.

11 MR. BREEN: Understanding that --

12 MR. BERLIN: I appreciate that.

13 MR. BREEN: -- there's a lot of cases.

14 Q. (By Mr. Berlin) And just to be clear,
15 Ven-A-Care does have a financial stake in this
16 litigation, right?

17 A. Yes, sir, like we do in all these qui tam
18 cases, as I understand. And our lawyers certainly
19 have a stake in it.

20 Q. And again, another question to update is
21 is Ven-A-Care still a licensed pharmacy?

22 A. Yes, sir.

1 Q. And what does that mean to be a licensed
2 pharmacy?

3 A. It means that we have met the State of
4 Florida's requirements for a pharmacy license.

5 Q. And can you describe for the jury, just in
6 general terms, what those requirements are?

7 A. Is this part of the designation or no or
8 is this something different?

9 Q. These areas that I'm going into right now
10 are just some background information that --

11 A. Okay, cause I can't tell you that I
12 prepared --

13 Q. That's okay.

14 A. -- for this.

15 Q. That's fine. And I'll -- specifically for
16 everyone's comfort, I'll specifically designate this
17 as outside the 30(b)(6). So if you can answer that
18 just to the best of your personal knowledge.

19 A. Well, my -- I think you have to either
20 have or employ a pharmacist who has the appropriate
21 training and licensure and then you have to meet a
22 variety of standards set up by the Florida board. Am

1 I familiar with every one of those? No. I guess I'd
2 refer you to the Florida Department of Professional
3 Regulation and their requirements for pharmacy.

4 Mr. Cobo, who is our pharmacist, really
5 deals with that matter, and my experience with it is,
6 I would say, peripheral. I know he does it. I know
7 that he maintains it, but I don't know all the hoops
8 he jumps through.

9 Q. Does Ven-A-Care have to pay any fee to the
10 State of Florida or to anyone to maintain the
11 license?

12 A. Every license I've ever got in the State
13 of Florida had some fee associated with it, yes.

14 Q. And is it still true that Ven-A-Care has
15 not seen a patient since approximately 1998?

16 MR. BREEN: Objection to form.

17 THE WITNESS: I think that would probably
18 be correct. I think that's been testified to
19 many times before, and I'm not aware of any --
20 any new ones, no.

21 Q. (By Mr. Berlin) That's what I was getting
22 at. You did testify to that on page 169 of your

1 deposition. And really what I was asking is, is that
2 still true in a sense that since that time,
3 Ven-A-Care has not seen patients?

4 MR. BREEN: Objection to form.

5 THE WITNESS: Well, I don't think we
6 have -- yes. I don't think we have any new
7 ones, no.

8 Q. (By Mr. Berlin) So why has Ven-A-Care
9 maintained its pharmacy license if it's not seeing
10 any patients?

11 A. Well, for a number of reasons. We have
12 over the years many times talked about getting back
13 into the pharmacy business in different ways. And I
14 think some of this has been talked about, but we want
15 that opportunity and availability. Certainly we are
16 interested in the pharmaceutical world. We're
17 interested in pharmaceutical pricing and in
18 particular we're interested in fraud, what we
19 perceive as fraud by manufacturers.

20 So I think we want to main -- much like I
21 maintain my medical license. I'm not doing a lot of
22 orthopedics, but I do my continuing medical education

1 and I understand Mr. Cobo does that as well, keeps us
2 up to date and informed. So we keep our license for
3 a number of reasons I would say.

4 Q. I'm going to shift to a new topic, which
5 is Abbott's pricing and marketing of the Ery drugs
6 named in the complaint, and those are the topics one
7 and nine in the notice.

8 A. Okay.

9 Q. You don't need to refer to them. My
10 questions will be specific enough, but I just wanted
11 to indicate to you that we were going to change
12 topics.

13 MR. BREEN: Is this a good time for a
14 break? We've been going for about another hour.
15 How much time do we have on the tape?

16 THE VIDEOGRAPHER: 20 minutes.

17 MR. BREEN: It's up to you guys, break
18 down and have another session before lunch.

19 MR. BERLIN: Well, just the problem is
20 with 20 minutes, I would think that we would
21 stay on this tape.

22 MR. BREEN: Okay.